

- (1) Whether claimant's appeal of October 7, 1996, is appropriately before the Appeals Board and whether the Appeals Board has jurisdiction to consider same.
- (2) Whether claimant is entitled to temporary total disability compensation as awarded in the Order of October 7, 1996.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The factual scenario of this case occurred as follows:

A preliminary hearing was held on this matter on September 3, 1996, before Special Administrative Law Judge William F. Morrissey. A decision was not rendered within five days as is required by statute and on October 7, 1996, claimant appealed, alleging the Special Administrative Law Judge had exceeded his jurisdiction in failing to issue the preliminary award within the time limits required by statute. On the same date, October 7, 1996, the Special Administrative Law Judge issued his decision denying claimant temporary total disability compensation finding no evidence in the record that supported a showing that claimant had been removed from work by a physician.

Claimant has filed two separate appeals in this matter. The first alleges the Special Administrative Law Judge lacked jurisdiction to not issue a decision within five days. The second is based upon the Special Administrative Law Judge's decision to deny claimant temporary benefits.

The Appeals Board finds, for preliminary hearing purposes claimant's first appeal alleging the Special Administrative Law Judge exceeded his jurisdiction in not rendering the decision within five days is rendered moot by the filing of the Special Administrative Law Judge's decision of October 7, 1996. As such claimant's first appeal should be and is hereby dismissed.

With regard to whether claimant is entitled to temporary total disability compensation during the time alleged it is noted that K.S.A. 44-534a and K.S.A. 44-551 control the rights of the parties to appeal from preliminary hearings. Unless it is found that one of the jurisdictional issues of K.S.A. 44-534a including whether the employee suffered accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, is raised, the Appeals Board does not have jurisdiction to consider this matter. Claimant's only other recourse would be to allege under K.S.A. 44-551 that the Special Administrative Law Judge exceeded his jurisdiction in granting or denying the benefits requested. As K.S.A. 44-534a specifically gives the Administrative Law Judge the power to decide issues dealing with medical treatment and temporary total disability compensation it cannot be said from the record that the Administrative Law Judge exceeded his jurisdiction in denying claimant temporary total disability compensation for the period July 24, 1996, through August 20, 1996. As such claimant's appeal of the October 7, 1996, preliminary Order by Special Administrative Law Judge William F. Morrissey should be and is hereby dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeals by claimant filed October 7, 1996, and October 8, 1996, should be and are hereby dismissed and the Order of Special Administrative Law Judge William F. Morrissey dated October 7, 1996, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1996.

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BOARD MEMBER

c: Michael L. Snider, Wichita, KS  
D. Shane Bangerter, Dodge City, KS  
William F. Morrissey, Special Administrative Law Judge  
Kenneth S. Johnson, Administrative Law Judge  
Philip S. Harness, Director